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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 09.09.2025*

+ **CM(M) 1261/2025 & CM APPL. 42063/2025**

SAKSHI & ANR.

.....Petitioners

Through: Mr. Sarthak Sisodia, Advocate.  
versus

RADHEY SHYAM & ANR.

.....Respondents

Through: Ms. Vishaka and Mr. Anuj Kumar,  
Advocates.

**CORAM: JUSTICE GIRISH KATHPALIA**

**J U D G M E N T (ORAL)**

1. Petitioners (*defendants in suit*) have challenged order dated 12.03.2025 of learned trial court whereby, their defence was struck off for the reason that for past few dates petitioner no.1 had not been appearing for concluding her cross-examination. I have heard learned counsel for both sides.

2. Broadly speaking, in the impugned order, the learned trial court observed that the present petitioner no.1 had not come forward for further cross-examination after 05.12.2023 and had been seeking adjournments on one or the other ground, which conveyed that she is intentionally delaying the matter and that calls for adverse action. After observing that, the learned



trial court struck off the defence.

3. Learned counsel for petitioners submits that the impugned order is not sustainable in the eyes of law since out of seventeen dates of hearing, petitioner no.1 appeared on as many as eleven hearings but could not appear on the remaining ones on account of her illness and/or her studies. Learned counsel for petitioners submits that the petitioners have already completely examined another witness in defendant's evidence and even petitioner no.1 herself has already been extensively cross-examined, so given an opportunity, she would ensure to appear.

4. On the other hand, learned counsel for respondents in all fairness submits that the only apprehension is that after conclusion of testimony of the petitioner no.1, she may come up with some additional witnesses. On this, learned counsel for petitioners submits that no additional witness would be sought to be examined.

5. I have also examined the ordersheets of the trial court, which are already on record from *pdf* 90 to 138.

6. At the very outset, I find the impugned order not sustainable in the eyes of law because even if justified, for failure of the petitioner no.1 to appear for conclusion of her cross-examination, it is her testimony which could be closed by the trial court, holding that the said inchoate testimony of petitioner no.1 would not be read in evidence. The defence itself could not be struck off on this ground. The Written Statement is already on record and



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as mentioned above, testimony of another witness of the petitioners already stands concluded. There is no reason for not reading the said concluded testimony of the other witness of the petitioners.

7. At the same time, petitioners also should be diligent in ensuring conclusion of testimony of petitioner no.1. It is submitted by learned counsel for respondents that now they need only one hour to conclude cross-examination of petitioner no.1, as she has already been partly cross-examined on two dates.

8. In view of the aforesaid, the impugned order is set aside and the petition is allowed, granting the petitioner no.1 last opportunity to appear for concluding her cross-examination. It is directed that learned counsel for both sides shall appear before the learned trial court on 15.09.2025 at 02:00pm and on that day, the learned trial court shall fix a date for further cross-examination of petitioner no.1. It is also directed that the entire remaining cross-examination of petitioner no.1 shall be concluded within one hour as assured by learned counsel for respondents.

9. Copy of this order be immediately sent to the learned trial court for compliance. Pending application stands disposed of.

**GIRISH KATHPALIA  
(JUDGE)**

**SEPTEMBER 09, 2025/dr**